IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

MONDAY, THE 20TH AUGUST 2007 / 29TH SRAVANA 1929

RSA.No. 623 of 2007()

AS.217/2003 of ADDL.SUB COURT, THALASSERY
OS.608/2001 of ADDL.MUNSIFF COURT, KANNUR
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APPELLANT/APPELLANT/PLAINTIFF

C.E.RAJAN KITTUNNI,
ERAYI HOUSE,HOUSE NO.145/A,
THAVAKKARA, KANNUR.

BY ADV. SRI.V.RAJAGOPAL

RESPONDENT/RESPONDENT/DEFENDANT:

MOOCHIKKAL SHARADA, SHYLAJA COTTAGE,
BEHIND STATE BANK OF INDIA, KANNUR.

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 20/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

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R.S.A NO. 623 OF 2007

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Dated this the 20th day of August, 2007

JUDGMENT

Plaintiff in O.S.608/2001 on the file of Addl.Munsiff Court, Kannur is the appellant. Defendant is the respondent. Appellant instituted the suit seeking a decree for damages for defamation contending that appellant sent a reply to the lawyer notice issued at the instance of the appellant with copy to District Court, Bar Association and Officer in charge of the Police Station, Kannur raising defamatory allegations against the petitioner and it has affected his reputation among his friends, relatives and public and therefore he is entitled to a damages for Rs.10,000/-. Respondent resisted the claim justifying the allegations on the ground that they are true.

2. Learned Munsiff on the evidence of appellant as PW1, respondent as DW1 and witness as DW2 and

Exts.A1 to A7 dismissed the suit holding that though it was unwarranted on the part of the appellant to state in the reply the allegations raised, the gist of the substance is correct and in such circumstance, it is justifiable by truth and therefore appellant is not entitled to the damages sought for. Appellant challenged the decree and judgment before Sub Court, Tellicherry in A.S.217/2003. Learned Sub Judge on reappreciation of evidence confirmed the findings of learned Munsiff and dismissed the suit. It is challenged in the second appeal.

3. Learned counsel appearing for appellant was heard.

4. The argument of learned counsel is that courts below having found that allegations in Ext.A2 are defamatory, in the absence of sufficient evidence to prove that allegations are

true, were not justified in dismissing the suit and therefore the decree and judgment are to be set aside.

5. Learned counsel argued that allegations raised in Ext.A2 reply are per se defamatory and every man has a reputation and evidence of PW1 establish that his reputation has been adversely affected by the defamatory statements in Ext.A1 and therefor courts below should have granted the decree.

6. On hearing learned counsel, I do not find any substantial question of law involved in the case. The question whether allegations in Ext.A1 are defamatory and whether they are justifiable by truth or not depend on appreciaiton of the allegations in Ext.A2 and the evidence. Trial court on appreciating the evidence found it against the appellant. The first appellate court

reappreciated the evidence and confirmed the findings of the learned Munsiff. I do not find that appreciation of evidence perverse warranting reappreciation of evidence in exercise of the powers of this court under seciton 100 of Code of Civil Procedure.

Appeal is dismissed in limine.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

W.P.(C).NO. /06

JUDGMENT

SEPTEMBER,2006